

No. 18A234

In the
Supreme Court of the United States

R.J. REYNOLDS TOBACCO COMPANY, ET AL.,

Applicants,

v.

MARY FARICY PARDUE, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF JOHN N. FARICY,

Respondent.

**APPLICATION FOR A SECOND EXTENSION OF TIME
IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA FIRST DISTRICT COURT OF APPEAL**

**TO: THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT**

Pursuant to Supreme Court Rule 13.5, R.J. Reynolds Tobacco Company
("Reynolds") and Philip Morris USA Inc. ("PM USA")¹ respectfully request a 49-day

¹ R.J. Reynolds Tobacco Company is a wholly owned subsidiary of R.J. Reynolds Tobacco Holdings, Inc., which is a wholly owned subsidiary of Reynolds American Inc., which in turn is an indirect, wholly owned subsidiary of British American Tobacco p.l.c., a publicly held corporation. Philip Morris USA Inc. is a wholly owned

extension of time, to and including November 9, 2018, in which to file a petition for a writ of certiorari to the Florida First District Court of Appeal.

This is applicants' second extension application in this case. The first application requested a 10-day extension of time, until September 21, 2018, because PM USA was evaluating whether to file a petition for a writ of certiorari in *Philip Morris USA Inc. v. Boatright*, 217 So. 3d 166 (Fla. 2d DCA 2017), a case that raises the same due-process issue that is raised in this case regarding the preclusive effect of jury findings from the class action prospectively decertified in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006) (per curiam). Applicants explained that *Boatright* is a better vehicle for plenary review than this case because, unlike the per curiam affirmance issued by the Florida First District Court of Appeal in this case, the Florida Second District Court of Appeal in *Boatright* issued a written opinion affirming the judgment. Applicants further stated that if PM USA files a petition for a writ of certiorari in *Boatright*, they plan to file a petition in this case asking the Court to hold this case pending the Court's disposition of the petition in *Boatright*. On September 7, 2018, the Court entered an order granting applicants'

subsidiary of Altria Group, Inc. No publicly held company owns 10 percent or more of the stock of Altria Group, Inc.

extension application and setting a new deadline of September 21, 2018, for the filing of a petition for a writ of certiorari.²

Applicants are filing this second extension application because last week the U.S. Court of Appeals for the Eleventh Circuit issued a decision in a case that raises the same due-process issue presented in this case and in *Boatright*. See *Searcy v. R.J. Reynolds Tobacco Co.*, __ F.3d __, No. 13-15258, 2018 WL 4214594 (11th Cir. Sept. 5, 2018). In *Searcy*, an *Engle* progeny case tried in federal court that culminated in a judgment against applicants, the Eleventh Circuit concluded that affording preclusive effect to the *Engle* jury's generalized findings does not violate due process. The Eleventh Circuit nevertheless acknowledged that "multiple acts of concealment had been presented to the *Engle* jury, and their general finding did not indicate which acts of concealment may have underlain their finding versus which allegations of concealment they might have rejected," which makes it "difficult to determine whether the *Engle* jury's basis for its general finding of concealment" was the same theory pursued by a particular individual *Engle* plaintiff. *Id.* at *7.

Applicants intend to file a petition for a writ of certiorari in *Searcy* simultaneously with PM USA's petition in *Boatright*. PM USA separately requested an extension of time to file the petition in *Boatright* until November 19,

² This Court has jurisdiction to review the First District Court of Appeal's decision in this case under 28 U.S.C. § 1257(a). A copy of the First District's decision is attached hereto as Exhibit A.

2018. Applicants believe that this Court's consideration of the due-process issue would be facilitated by the simultaneous filing of the petitions in *Searcy* and *Boatright*, which would enable the Court to consider the reasoning of the Florida state and federal courts on these issues at the same time and to receive a full picture of how the due-process issue is being treated by those courts. Applicants further intend to file a petition for a writ of certiorari asking this Court to hold this case pending its disposition of *Searcy* and *Boatright*.

An additional extension of time until November 9, 2018, to file the petition in this case is warranted to permit applicants to take account of the recent decision in *Searcy* and to file the petition in this case as close in time as possible to the forthcoming petitions in *Searcy* and *Boatright*.

CONCLUSION

Accordingly, applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari by 49 days, to and including November 9, 2018.

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Dated: September 11, 2018

EXHIBIT A

247 So.3d 415 (Table)
Unpublished Disposition
(This unpublished disposition is referenced in the Southern Reporter.)
District Court of Appeal of Florida, First District.

PHILIP MORRIS USA INC. and R.J. Reynolds Tobacco Company, Appellants,
v.
Mary Faricy PARDUE, as personal representative of the Estate of John N. Faricy, Appellee.

No. 1D17-959
|
June 13, 2018

On appeal from the Circuit Court for Alachua County. [Stanley H. Griffis, III](#), Judge.

Attorneys and Law Firms

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Opinion

Per Curiam.

*1 AFFIRMED.

[Lewis, Makar](#), and [M.K. Thomas, JJ.](#), concur.

All Citations

247 So.3d 415 (Table), 2018 WL 2972955